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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SANTA CLARA  
11

12 SAN JOSE POLICE OFFICERS'  
13 ASSOCIATION,

14 Plaintiff,

15 v.

16 CITY OF SAN JOSE, BOARD OF  
ADMINISTRATION FOR POLICE AND  
17 FIRE DEPARTMENT RETIREMENT PLAN  
OF CITY OF SAN JOSE, and DOES 1-10,  
inclusive,

18 Defendants.  
19

20 AND RELATED CROSS-COMPLAINT  
21 AND CONSOLIDATED ACTIONS

Case No. 1-12-CV-225926  
(and Consolidated Actions 1-12-CV-225928,  
1-12-CV-226570, 1-12-CV-226574,  
1-12-CV-227864, and 1-12-CV-2335660)

**SAN JOSE POLICE OFFICERS' ASSOCIATION'S  
RESPONSE TO CITY OF SAN JOSE'S REQUEST  
FOR DIFFERENT STATEMENT OF DECISION  
PURSUANT TO RULE 3.1590(D)**

The Hon. Patricia Lucas, Dept. 2

Action Filed: June 6, 2012

22 Pursuant to Rule of Court 3.1590(d), San Jose Police Officers' Association ("SJPOA")  
23 submits its response to the City of San Jose's Request for Different Statement of Decision.


24 The court should reject the City's proposed changes to the Statement of Decision ("SOD")  
25 regarding Section 1507-A. First, no clarifications are necessary because the SOD *already* found  
26 Section 1507-A was unlawful based on its Section 1506-A rationale.

27 Second, the SOD correctly reflects (at 16:28-17:1) that the City argued at trial that the  
28 unions' challenges to Section 1507-A were "a repetition" of the challenge to Section 1506-A. The

1 City thus waived *any* argument that Section 1507-A is lawful *independently* of Section 1506-A.  
2 The City cannot use the objections procedure to resurrect an already-waived argument. (*Bogacki*  
3 *v. Board of Supervisors* (1971) 5 Cal.3d 771, 780.)  
4 Third, the City's proposed changes would prejudice SJPOA's members because—based on  
5 the City's litigation position—it did not develop at trial supporting evidence or argument that  
6 Section 1507-A fails for lack of consideration. The First Amended Complaint alleged that Section  
7 1507-A was additionally unlawful because it forced employees to give up vested rights without  
8 anything in return. (See FAC ¶ 46.) The court should not close the door on that challenge by  
9 accepting the City's invitation to "clarify" the SOD.  
10 Finally, the City's changes are unnecessary to pursue its quixotic request for IRS approval.  
11 The SOD already states that its ruling does not apply to new hires (at 5:12-15).

12  
13 Dated: January 21, 2014

CARROLL, BURDICK & McDONOUGH LLP

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15 By   
16 Gregg McLean Adam  
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On January 21, 2014, I served true copies of the following document(s) described as **SJPOA'S RESPONSE TO CITY OF SAN JOSE'S REQUEST FOR DIFFERENT STATEMENT OF DECISION PURSUANT TO RULE 3.1590(D)** on the interested parties in this action as follows:

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Carroll, Burdick & McDonough LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Joan Gonsalves  
Joan Gonsalves

**SERVICE LIST**  
***San Jose Police Officers' Association v. City of San Jose***  
**No. 1-12-CV-225926 (and consolidated actions)**

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